

April 29

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ATTORNEY'S WORK PRODUCT

April 30, 1993

MEMORANDUM

Re: Workplace Inhalation
Hazards Meeting

On April 29, 1993, I attended a session devoted to ETS at the 14th Annual Scientific Meeting of the Universities Occupational Safety and Health Educational Resources Center. The meeting, whose theme was "Controlling Inhalation Hazards in the Workplace," took place at the Mount Sinai Medical Center in New York. A copy of the program is attached. There were no texts of presentations or other handouts.

There were three speakers in the ETS session:

- (1) SAB Committee Chairman Morton Lippmann;
- (2) Charles Adkins, Director, OSHA Directorate of Health and Safety Programs;
- (3) John McCarthy, President, Environmental Health & Engineering, Inc., Newton, Mass.

This memorandum summarizes points of interest in the presentations given by these three speakers.

(1) Lippmann

Lippmann's presentation consisted almost exclusively of him displaying transparencies of full pages of the EPA risk assessment and reading from them. He presented nothing that would be new to anyone familiar with his statements in

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connection with his committee's review of the drafts of the risk assessment. Only a few of his remarks are worth mentioning:

--Lippmann noted that there had been challenges to the EPA document on the basis of its lack of adherence to the agency's carcinogen classification guidelines. His response was: "I don't care what the language [of the guidelines] says. * * * If the guidelines don't allow us to say it [i.e., that ETS causes cancer] from this evidence, then the guidelines need to be changed." He went on to say that he understood that the agency was in the process of revising the guidelines.

--Lippmann observed that there are reports of various ETS health effects in the scientific literature, but that the EPA document was limited to lung cancer in adults and respiratory effects in children. He observed that "a fellow named Glantz" had claimed that ETS exposure was responsible for some 30,000 annual heart disease deaths in the United States. His response was: "We're not saying he's wrong. But the published data don't justify such a conclusion at this time."

--Lippmann was asked whether the scientific literature demonstrated any health effects in the workplace. He said that there was no workplace data, but that it was reasonable to conclude that there were workplace health

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effects because there was exposure to ETS just as there was in the home.

--At the end of his presentation, in the course of answering a question on another subject, Lippmann gratuitously observed that the EPA estimate of some 3,000 lung cancer deaths is "not a big increment. In the population as a whole it's not really a major factor."

(2) Adkins

Most of Adkins' presentation was taken up with an elementary explanation of the steps involved in the OSHA rulemaking process and a narration of the activity that has taken place with respect to the IAQ RFI. The presentation, which was delivered essentially extemporaneously without slides or overheads, contained a number of relevant points:

--Adkins said that most people within OSHA believe that the OSHA Cancer Policy was preempted by the Supreme Court's Benzene decision, which in the context suggested that Adkins felt that OSHA was required to do quantitative risk assessments for rulemakings involving potential carcinogens, rather than employing a no-threshold concept that could logically require a ban of a particular substance.

--Adkins said that nothing had yet been decided with regard to the IAQ RFI, including whether to treat ETS separately and whether to promulgate a regulation at all. OSHA currently is developing a position paper on IAQ for

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Secretary Reich and the new head of OSHA. If there is to be a proposed regulation, he predicts that it will be ready for publication by the end of 1993. Then the regulatory process, involving public comment and hearings, typically would take three to five years. With reference to those who believed that separating ETS from IAQ in general would reduce delays, he said that his personal view was that this would not make all that much difference; the process would be time-consuming in any event.

--OSHA has been studying the EPA risk assessment and has placed it in the RFI docket. It will "employ the ETS data and other things" in determining whether an ETS rule is required. The EPA document on its own, however, was "not enough" on which to base a workplace rule. He acknowledged that the workplace studies are insufficient by themselves to establish a lung cancer risk. Further, he observed that the portion of EPA's 3,000 lung cancer death estimate attributable to workplace exposure brought the workplace risk level down to the one in one thousand range derived from the Benzene decision. [Note: Actually the risk level, using EPA's figures, would be on the order of 2/50,000.]

--OSHA must ask itself whether the record would require a ban on ETS or some other approach such as a ventilation standard. In this context he observed that OSHA generally "doesn't ban things." He was not sure, he said, whether there was legal authority for a ban.

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--The IAQ issue is a "tough call" because there are so many different types of workplaces.

--In the wake of the Eleventh Circuit decision invalidating the bulk of OSHA's Permissible Exposure Limits (PELs), any future rulemaking efforts will require "more detailed treatment."

--Adkins described the current smoking policy in the Labor Department building in Washington (i.e., smoking allowed in some rest rooms and a section of the cafeteria). He said that he was not convinced that this amount of smoking presented any risk of harm to him personally.

--Adkins was asked about the adequacy of ASHRAE Standard 62-89. He said that "most people" thought it was adequate and added that if OSHA were to base a rule on that standard it would deal with "most of the problem."

--Asked about the possible application of the General Duty Clause in the Occupational Safety and Health Act (which requires the correction of clearly unsafe workplace conditions even in the absence of relevant rules), Adkins replied that this issue had been discussed frequently within OSHA. He pointed out that citing an employer for a violation of this clause involved a very difficult burden of proof. In his view the General Duty Clause was invoked when there was literally "a body on the floor" in the workplace.

--Asked whether any PELs issued in the course of an IAQ rulemaking proceeding would be lower than any existing

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PELs for industrial workplaces, Adkins emphatically said no. He said there could not be separate PELs for blue collar and white collar workers; that would be a nightmare. He added that dealing with the situation by means of a ventilation standard rather than PELs "hopefully" would eliminate such a problem of inconsistent treatment.

(3) McCarthy

McCarthy, who is an environmental engineer, gave a simplistic account of the workplace smoking policy issue. Essentially his position is that source control of ETS is the obviously preferable approach from an engineering standpoint, but that difficulties of implementation and enforcement may require the provision of smoking lounges with separate ventilation instead. McCarthy rather gleefully pointed out that such alterations to a building's ventilation system could be very expensive, but he maintained that anything less was totally ineffectual because it simply recirculated smoke into non-smoking areas.

Michael T. Buckley

Attachment

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